

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Larrance Major Clay,)	CASE NO. 5:16 CV 525
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Michele Miller, Warden)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

Introduction

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Kenneth Mchargh (Doc. 8) which recommends denial of petitioner's Motion for Summary Judgment filed in this matter in which a Petition for Writ of Habeas Corpus is pending. Petitioner did not file objections to the recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

Standard of Review

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, "The judge must determine *de novo* any proposed finding or

recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.” When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

Discussion

Petitioner filed a Motion for Summary Judgment (Doc. 7) although respondent’s Return of Writ is not yet due. As recognized by the Magistrate Judge, petitioner essentially seeks default judgment. But, respondent is not in default and default judgments are not available in habeas corpus proceedings.

Having no objections, the Court has reviewed the Report and Recommendation and found no clear error. The Court agrees with the findings of the Magistrate Judge and accepts the recommendation.

Conclusion

For the reasons set forth in the Magistrate Judge’s Report and Recommendation, which is incorporated herein, the petitioner’s Motion for Summary Judgment is denied.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 6/21/16